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Ketua Pentadbir Parlimen Malaysia, Parlimen Malaysia & Ors v Datuk Hj Idris bin Hj Buang & Anor

B

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(f)-21–07 OF 2024 (W)
HASNAH HASHIM CJ (MALAYA), ZABARIAH MOHD AND ABDUL KARIM FCJJ
C 21 JULY 2025

Constitutional Law — Legislation — Constitutionality — Whether amendments to sub-paras 20(1) and (2) of First Schedule to Members of Parliament (Remuneration) Act 1980 unconstitutional — Whether arts 132 and 147 of Federal Constitution applicable to former members of parliament — Federal Constitution arts 132, 147 & 160(2)

D

Statutory Interpretation — Retrospective operation — Subsidiary legislation — Effect of amendments to Interpretation Acts 1948 and 1967 ('Act 388') — Rights of former members of parliaments ('MPs') for adjustment of pensions — Whether s 20 of Act 388 after its amendment had dispensed with need for express power to be given by Parent Act and that delegated authority was entitled to legislate retrospectively notwithstanding absence of any express provision in Parent Act — Whether case of Kerajaan Malaysia v Wong Pot Heng & Anor [1997] 1 MLJ 437 no longer binding in view of amendment to s 20 of Act 388 — Whether in view of amendment to long title of Act 388, scope of Act 388 was not limited merely to meanings of words used in written laws — Whether former MPs' right to pension under former (old) para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 ('Act 237') was an accrued/acquired right or merely contingent right and unaccrued inchoate right — Whether right to receive pension was saved or protected by s 30(1)(b) of Act 388 — Whether unaccrued inchoate right to receive increased pension which was not saved by s 30(1)(b) of Act 388 could be modified or extinguished by retrospective amendment — Interpretation Acts 1948 and 1967 ss 17A, 20 & 30(1)(b) — Interpretation (Amendment) Act 1997 — Members of Parliament (Remuneration) Act 1980, First Schedule, para 20 — Members of Parliament (Remuneration) (Amendment) Act 2015

I

The respondents were former members of Parliaments ('MPs') and had retired before the coming into force of the Members of Parliament (Remuneration) (Amendment) Act 2015 (Act A1491) ('the 2015 Amendment). The respondents had filed originating summons ('the OS') to seek a declaration that as retired MPs, they possessed the right for their pensions to be recomputed and

revised in accordance with the increase of salary of MPs pursuant to the 2015 Amendment. The OS was allowed by the High Court but on appeal, the Court of Appeal found in favour of the respondents on the grounds that the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 ('the 2015 Order') did not have a retrospective effect. In the present appeal, the Federal Court had granted leave in respect of the following questions: (a) in view of the subsequent amendments made to the long title, s 20 of the Interpretation Acts 1948 and 1967 ('Act 388') and insertion of new s 17A vide the Interpretation (Amendment) Act 1997 ('Act A996') ('the said amendments'), whether s 20 of Act 388 after its amendment had dispensed with the need for an express power to be given by the Parent Act and that the delegated authority was entitled to legislate retrospectively notwithstanding the absence of any express provision in its Parent Act ('question 1'); (b) whether the decision in *Kerajaan Malaysia v Wong Pot Heng & Anor* [1997] 1 MLJ 437 ('*Wong Pot Heng*'s case') which enunciated that 'a subsidiary legislation could only be made with retrospective operation if it was authorised by an express power in, or by necessary implication from its Parent Act' was no longer binding in view of the said amendments ('question 2'); (c) whether the previous MPs' entitlement to pension under the former (old) para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 ('Act 237') was an accrued or acquired right which was saved or protected by s 30(1)(b) of Act 388, at the time when the 2015 Order was made ('question 3'); (d) whether such previous MPs' entitlement to pension under the former (old) para 20 of the First Schedule to Act 237 was a contingent right and neither saved or protected by s 30(1)(b) of Act 388 ('question 4'); (e) whether the unaccrued inchoate right to receive an increased pension which was not saved by s 30(1)(b) of Act 388 could be modified or extinguished by retrospective amendment ('question 5'); and (f) in view of the amendment to the long title of Act 388 vide Act A996, whether the scope and character of Act 388 was not merely limited to meanings of words used in written law/interpreting words and phrases of the statutes ('question 6'). In gist, the present appeal raised the question of whether retired MPs were entitled to a revision of their pensions when there was a revision of the salary of serving MPs.

Held, allowing the appeal with no order as to costs, setting aside the decision of the Court of Appeal and affirming the decision of the High Court:

(1) The court was of the view that the new sub-paras 20(1) and (2) of the First Schedule to Act 237 were not unconstitutional and had not infringed the respondents' alleged constitutional rights under arts 132, 147 and 160(2) of the Federal Constitution ('the FC'). Articles 132 and 147 of the FC were not applicable to the respondents as both articles of the FC were specifically to cater for the members of the public services and protection of pension rights of members of the public services. By virtue of art 132(3) of the FC, a member of either House of Parliament is

not and cannot be regarded as being part of the public service. Therefore, as former MPs, the respondents did not come within the ambit of protection given by art 147 of the FC (see paras 17–18, 20 & 28).

(2) The Minister had articulated clearly in Parliament that the amended s 20 of Act 388 was meant to validate past actions taken under all subsidiary legislations which were made retrospectively in the absence of express enabling powers in the Parent Acts. The proposition that s 20 of Act 388 after its amendment had never dispensed with the need for an express power to be given by the Parent Act and that the delegated authority was not entitled to legislate retrospectively in the absence of any express provision in its Parent Act would render the amended new s 20 and other amended provisions in Act 388 futile, otiose, in vain and nugatory. This would be contrary to the maxim that Parliament did not legislate in vain. For the court to disregard the express provision of the amended s 20 of Act 388 would have a far-reaching effect and consequences in that the court would be encroaching into the realm of legislative domain. The court therefore answered question 1 in the affirmative (see paras 21, 49–50 & 82).

(3) It could not be gainsaid that the decision in the *Wong Pot Heng*'s case was premised on the old provisions of the long title and s 20 of Act 388 prior to their amendment, to wit, before the amendments to the long title, ss 15 and 20 of Act 388 and the insertion of new s 17A vide Act A996. Therefore, *Wong Pot Heng*'s case was no longer binding and could not stand after the amendment to Act 388 via Act A996. The amendments to Act 388 via Act A996 had changed the position of the law and character of Act 388. As such, the court answered question 2 in the affirmative (see paras 47 & 82).

(4) The amendment made to the long title of Act 388 made it clear that the scope of Act 388 was not limited merely to the meanings of words used in written laws. With the amendment to the long title, the character of Act 388 had changed, as the Act was no longer confined to merely interpreting words and phrases of the statutes, but shall have the legislative power to provide a delegated authority (power) to make a subsidiary legislation with retrospective effect as reflected from the new s 20 of Act 388. The court answered question 6 in the affirmative (see paras 45 & 82).

(5) At the time when the 2015 Order was made ie, on 16 February 2015, the respondents' entitlement to adjustment of pensions to account for increment in salaries of current members of Parliament under the former (old) para 20 of the First Schedule to Act 237 was neither saved nor protected by s 30(1)(b) of Act 388. The reason being, the respondents' claims were not rights which had already accrued when the 2015 Order was made but merely a contingent right that depended on the occurrence

of specified event ie salary revision, or a merely inchoate right that had not fully developed, matured or vested. The unaccrued inchoate right to receive an increased pension which was not saved by s 30(1)(b) of Act 388 could be modified or extinguished by retrospective amendment. Therefore, the court answered question 3 in the negative whereas question 4 and question 5 in the affirmative (see paras 53–54, 62–65 & 82).

[Bahasa Malaysia summary

Responden-responden adalah bekas ahli Parlimen ('ahli Parlimen') dan telah bersara sebelum berkuatkuasanya Akta Ahli Parlimen (Saraan) (Pindaan) 2015 (Akta A1491) ('Pindaan 2015 tersebut'). Responden-responden telah memfailkan saman pemula untuk mendapatkan pengisytiharan bahawa sebagai ahli Parlimen yang telah bersara, mereka mempunyai hak untuk pencen mereka dikira semula dan disemak mengikut kenaikan gaji ahli Parlimen menurut Pindaan 2015 tersebut. Saman pemula tersebut dibenarkan oleh Mahkamah Tinggi tetapi atas rayuan, Mahkamah Rayuan membuat dapatan yang memihak kepada responden-responden atas alasan bahawa Perintah Ahli Parlimen (Saraan) (Pindaan Jadual Pertama) 2015 ('Perintah 2015 tersebut') tidak mempunyai kesan retrospektif. Dalam rayuan semasa, Mahkamah Persekutuan telah memberikan kebenaran berkenaan dengan soalan-soalan berikut: (a) mengambil kira pindaan berikutnya yang dibuat kepada tajuk panjang, s 20 Akta Tafsiran 1948 dan 1967 ('Akta 388') dan pemasukan s 17A yang baharu melalui Akta Tafsiran (Pindaan) 1997 ('Akta A996') ('pindaan-pindaan tersebut'), sama ada s 20 Akta 388 selepas pindaannya telah mengetepikan keperluan untuk kuasa nyata diberikan oleh Akta Induk dan bahawa pihak berkuasa yang diwakilkan berhak menggubal undang-undang secara retrospektif walaupun tiada apa-apa peruntukan nyata dalam Akta Induknya ('soalan 1'); (b) sama ada keputusan dalam kes *Kerajaan Malaysia v Wong Pot Heng & Anor* [1997] 1 MLJ 437 ('kes *Wong Pot Heng*') yang menyatakan bahawa 'a subsidiary legislation could only be made with retrospective operation if it was authorised by an express power in, or by necessary implication from its Parent Act' tidak lagi mengikat setelah mengambil kira pindaan-pindaan tersebut ('soalan 2') ; (c) sama ada kelayakan ahli-ahli parlimen yang terdahulu untuk pencen di bawah perenggan 20 Jadual Pertama Akta Ahli Parlimen (Saraan) 1980 ('Akta 237') yang terdahulu (lama) adalah hak terakru atau diperoleh yang diselamatkan atau dilindungi oleh s 30(1)(b) Akta 388, semasa Perintah 2015 tersebut dibuat ('soalan 3'); (d) sama ada kelayakan ahli-ahli parlimen terdahulu untuk pencen di bawah perenggan 20 Jadual Pertama Akta 237 terdahulu (lama) adalah hak kontingen dan tidak diselamatkan atau dilindungi oleh s 30(1)(b) Akta 388 ('soalan 4'); (e) sama ada hak inkoat tidak terakru untuk menerima peningkatan pencen yang tidak diselamatkan oleh s 30(1)(b) Akta 388 boleh diubah suai atau dipadamkan melalui pindaan retrospektif ('soalan 5'); dan (f) mengambil kira pindaan kepada tajuk panjang Akta 388 melalui Akta A996, sama ada skop

dan ciri-ciri Akta 388 tidak hanya terhad kepada makna perkataan yang digunakan dalam undang-undang bertulis/mentafsir perkataan dan frasa statut ('soalan 6'). Inti patinya, rayuan semasa menimbulkan persoalan sama ada ahli-ahli parlimen yang sudah bersara layak mendapat semakan pencen mereka apabila terdapat semakan bagi gaji ahli-ahli parlimen yang sedang berkhidmat.

Diputuskan, membenarkan rayuan tanpa perintah mengenai kos, mengenepikan keputusan Mahkamah Rayuan dan mengesahkan keputusan Mahkamah Tinggi:

(1) Mahkamah berpendapat bahawa sub-perenggan 20(1) dan (2) yang baharu bagi Jadual Pertama Akta 237 adalah tidak bercanggah dengan perlembagaan dan tidak melanggar hak perlembagaan responden-responden di bawah perkara 132, 147 dan 160(2) Perlembagaan Persekutuan ('PP'). Perkara 132 dan 147 PP tidak terpakai kepada responden-responden kerana kedua-dua perkara PP tersebut adalah khusus untuk memenuhi keperluan anggota perkhidmatan awam dan perlindungan hak pencen anggota perkhidmatan awam. Berdasarkan perkara 132(3) PP, ahli mana-mana Dewan Parlimen tidak dan tidak boleh dianggap sebagai sebahagian daripada perkhidmatan awam. Oleh itu, sebagai bekas ahli Parlimen, responden-responden tidak berada dalam lingkungan perlindungan yang diberikan oleh perkara 147 PP (lihat perenggan 17–18, 20 & 28).

(2) Menteri telah menyatakan dengan jelas di Parlimen bahawa pindaan s 20 Akta 388 bertujuan untuk mengesahkan tindakan lepas yang diambil di bawah semua perundangan subsidiari yang dibuat secara retrospektif tanpa adanya kuasa nyata yang membolehkan dalam Akta Induk. Hujahan bahawa s 20 Akta 388 selepas pindaannya tidak pernah mengetepikan keperluan untuk kuasa nyata diberikan oleh Akta Induk dan bahawa pihak berkuasa yang diwakilkan tersebut tidak berhak untuk menggubal undang-undang secara retrospektif jika tiada apa-apa peruntukan nyata dalam Akta Induknya akan menjadikan s 20 yang baru dipinda dan peruntukan-peruntukan lain yang telah dipinda dalam Akta 388 menjadi lewah, sia-sia dan tidak berguna. Ini akan bertentangan dengan pepatah bahawa Parlimen tidak membuat undang-undang dengan sia-sia. Pengabaian oleh mahkamah ke atas peruntukan nyata s 20 Akta 388 yang dipinda akan memberi kesan dan akibat yang meluas di mana mahkamah akan menceroboh ke dalam bidang perundangan. Oleh itu mahkamah menjawab soalan 1 secara afirmatif (lihat perenggan 21, 49–50 & 82).

(3) Tidak boleh dinafikan bahawa keputusan dalam kes *Wong Pot Heng* adalah berdasarkan peruntukan lama bagi tajuk panjang dan s 20 Akta 388 sebelum pindaannya, iaitu, sebelum pindaan kepada tajuk panjang, ss 15 dan 20 Akta 388 dan pemasukan s 17A yang baharu melalui Akta

A996. Oleh itu, kes *Wong Pot Heng* tidak lagi mengikat dan tidak boleh bertahan selepas pindaan Akta 388 melalui Akta A996. Pindaan kepada Akta 388 melalui Akta A996 telah mengubah kedudukan undang-undang dan sifat Akta 388. Oleh itu, mahkamah menjawab soalan 2 secara afirmatif (lihat perenggan 47 & 82).

(4) Pindaan yang dibuat kepada tajuk panjang Akta 388 menunjukkan dengan jelas bahawa skop Akta 388 tidak terhad hanya kepada makna perkataan yang digunakan dalam undang-undang bertulis. Dengan pindaan kepada tajuk panjang tersebut, ciri-ciri Akta 388 telah berubah, kerana Akta tersebut tidak lagi terhad kepada hanya mentafsir perkataan dan frasa statut, tetapi mempunyai kuasa perundangan untuk memberikan autoriti (kuasa) yang diwakilkan untuk membuat perundangan subsidiari dengan kesan retrospektif seperti mana s 20 Akta 388 yang baharu. Mahkamah menjawab soalan 6 secara afirmatif (lihat perenggan 45 & 82).

(5) Pada masa Perintah 2015 tersebut dibuat iaitu, pada 16 Februari 2015, kelayakan responden-responden untuk pelarasan pencen untuk mengambil kira kenaikan gaji ahli-ahli Parlimen yang masih berkhidmat di bawah perenggan 20 Jadual Pertama Akta 237 yang terdahulu (lama) tidak diselamatkan atau dilindungi oleh s 30(1)(b) Akta 388. Alasannya adalah kerana tuntutan responden-responden bukanlah hak yang telah terakru semasa Perintah 2015 tersebut dibuat tetapi hanya hak kontingen yang bergantung kepada kejadian tertentu iaitu semakan gaji, atau hak inkoat semata-mata yang belum berkembang, matang atau terletak hak sepenuhnya. Hak inkoat tidak terakru untuk menerima peningkatan pencen yang tidak diselamatkan oleh s 30(1)(b) Akta 388 boleh diubah suai atau dipadamkan melalui pindaan retrospektif. Oleh itu, mahkamah menjawab soalan 3 secara negatif manakala soalan 4 dan soalan 5 secara afirmatif (lihat perenggan 53–54, 62–65 & 82).]

Cases referred to

Abdul Salam bin Husin v Majlis Angkatan Tentera & Anor [2011] 2 MLJ 573; [2011] 2 CLJ 1, FC (refd)

Government of Malaysia v VR Menon [1990] 1 MLJ 277; [1990] 1 CLJ Rep 115, SC (refd)

Kerajaan Malaysia v Wong Pot Heng & Anor [1997] 1 MLJ 437, FC (overd)

Syed Ibrahim bin Syed Mohd & Ors v Esso Production Malaysia Incorporated [2004] 2 MLJ 49, CA (not folld)

The Government of Malaysia & Anor v Aminah bt Ahmad (suing in her personal capacity and on behalf of 56 retired members of the public service) [2023] 5 MLJ 32; [2023] 8 CLJ 1, FC (distd)

Legislation referred to

Constitution (Amendment) Act 1992 para 7(d)
Federal Constitution arts 132, 132(1), (3), 147, 147(1), 160, 160(2)
Interpretation (Amendment) Act 1997 ss 4, 3(2), 8
Interpretation Acts 1948 and 1967 ss 15, 17A, 20, 30, 30(1), (1)(b)
Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 s 3(6), (6)(a), (6)(b), (6)(c), (6)(d), (6)(e)
Members of Parliament (Remuneration) (Amendment) Act 2015
Members of Parliament (Remuneration) Act 1980 ss 2, 3(1), (2), 4, 7, First Schedule, para 20, 20(1), (2)
Parliamentary Service Act 1963 (repealed by Constitution (Amendment) Act 1992)
Pensions Adjustment Act 1980 s 2
Interpretation Act 1978 [UK] s 16

Appeal from: *Datuk Hj Idris bin Hj Bujang & Anor v Ketua Pentadbir Parlimen Malaysia & Ors* [2024] 3 MLJ 16 (Court of Appeal, Putrajaya)

Rahazlan Affendi bin Abdul Rahim (with Liew Horng Bin and Nur Syazwani bt Abdul Aziz) (Attorney General's Chambers) for the appellant.
Krishna Dallumah (with Steven Thiru, Shankar Ram Asnani, Indran Kumaraguru, Nasuha Badrul Din, Chong Jen Hui and Yong Yoong Hui) (Krishna Dallumah & Indran) for the respondents.

Hasnah Hashim CJ (Malaya) (delivering judgment of the court):

INTRODUCTION

[1] This appeal raises the question whether retired Members of Parliament are entitled to a revision of their pensions when there is a revision of the salary of serving Members of Parliament.

[2] On 2 July 2024 this court granted leave in respect of the following questions:

(a) question 1:
In view of the subsequent amendments made to the long title, s 20 of the Interpretation Acts 1948 and 1967 (Act 388) and insertion of new s 17A vide Act A996, whether s 20 of the Interpretation Acts 1948 and 1967 (Act 388) after its amendment has dispensed with the need for an express power to be given by the Parent Act and that the delegated authority is entitled to legislate retrospectively notwithstanding the absence of any express provision in its Parent Act?

(b) question 2:
Whether the decision in *Kerajaan Malaysia v Wong Pot Heng &*

Anor [1997] 1 MLJ 437 which enunciated that 'a subsidiary legislation could only be made with retrospective operation if it was authorised by an express power in, or by necessary implication from its Parent Act' is no longer binding in view of the subsequent amendments made to the long title, s 20 of the Interpretation Acts 1948 and 1967 (Act 388) and insertion of new s 17A vide Act A996?

(c) question 3:
Whether the previous Members of Parliament's entitlement to pension under the former (old) para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) which stated that 'Whenever the salaries of a Member are revised, the salary on which a pension granted under paragraph 2 or a derivative pension granted under paragraph 5, 6 or 7 is based shall be adjusted to the revised salary as appropriate and the pension or derivative pension recomputed accordingly' is an accrued or acquired right which is saved or protected by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388), at the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015;

(d) question 4:
Whether such previous Members of Parliament's entitlement to pension under the former (old) para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is a contingent right and neither saved nor protected by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388)?

(e) question 5:
Whether the unaccrued inchoate right to receive an increased pension which was not saved by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388) extinguished by retrospective amendment?

(f) question 6:
In view of amendment to long title of the Interpretation Acts 1948 and 1967 (Act 388) vide Act A996, whether the scope and character of Act 388 is not merely limited to meanings of words used in written law/interpreting words and phrases of the statutes?

(g) question 7:
Whether the unaccrued inchoate right to receive an increased pension which was not saved by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388) can be modified or extinguished by retrospective amendment?

(h) question 8:
In view of amendment to long title of the Interpretation Acts 1948 and 1967 (Act 388) vide Act A996, whether the scope and character of Act 388 is not merely limited to meanings of words used in written

law/interpreting words and phrases of the statutes?

THE FACTUAL BACKGROUND

[3] The respondents are former Members of Parliament ('MPs') and retired before the coming into force the Members of Parliament (Remuneration) (Amendment) Act 2015 (Act A1491) ('the 2015 Amendment'). Vide an originating summons filed in the High Court the respondents sought a declaration that as retired MPs they possessed the right for their pensions to be recomputed and revised in accordance with the increase of salary of MPs pursuant to the 2015 Amendment. The 2015 Amendment was *gazetted* on 9 July 2015 however, it came into force on 1 January 2015. The reliefs sought are as follows:

(i) Deklarasi bahawa Pemohon-Pemohon yang disenaraikan Jadual A yang semuanya pernah merupakan ahli Senat/Parlimen dan/atau kini merupakan ahli Senat/Parlimen yang telah bersara, berhak untuk menerima dan dibayar pencen yang dikira dan disemak semula ('recomputed and revised pensions') masing-masing berdasarkan kenaikan upah ahli Senat/Parlimen menurut *Akta Pindaan Ahli-Ahli Parlimen (Upah) 2015* yang digazetkan pada 1 Januari 2015;

(ii) Perintah selanjutnya bahawa Responden-Responden hendaklah membayar Pemohon-Pemohon yang disenaraikan Jadual A, pencen yang dikira dan disemak semula dengan serta merta dari tarikh perintah ini dan terus membayarkan mereka pencen yang dikira dan disemak semula masing-masing seterusnya selepas ini;

(iii) Perintah bahawa Responden-Responden hendakiah membayar Pemohon-Pemohon yang disenaraikan Jadual A, segala jumlah tertunggak pencen yang dikira dan disemak semula masing-masing bersama dengan faedah yang dikira pada kadar 5% setahun mulai dari tarikh 1 Januari 2015 sehingga tarikh perintah ini.

[4] Before the 2015 Amendment the monthly salaries of the Members of the Senate and the House of Representatives were RM4,112.79 and RM6,508.59 respectively. The aforesaid amendment increased the salaries to RM11,000and RM16,000 respectively.

[5] The High Court dismissed the respondents' OS for the following reasons:

(a) the wordings of the new sub-paras 20(1) and 20(2) of the First Schedule to the Members of Parliament (Remuneration) Act 1980 are clear and unambiguous and this court must give its effect. The provisions of the 2015 Amendment are also clear and unambiguous that it only applies to serving Members of Parliament as at 1 January 2015, where the Act came into operation and clearly are not applicable to the respondents. The

respondents cannot rely upon sub-paras 20(1) and 20(2) of the First Schedule which has been amended and ceased to be the law;

(b) the existing sub-paras 20(1) and 20(2) of the First Schedule are not unconstitutional. The applicants have not shown any transgression of any constitutional principles. The pensions received by the respondents have not been reduced or affected in any manner. Instead as of 1 January 2014, the respondents' pensions would be increased 2% annually without having to wait for any revised salary of Members of Parliament. The new or existing law relating to pension is not less favourable to the respondents as envisaged under art 147(1) of the Federal Constitution ('the FC'); and

(c) arts 132 and 160 of the FC relates to public services and thus inapplicable to the respondents. The doctrine of legitimate expectation raised by the respondents is also inapplicable as the respondents claim is not recognised by law.

[6] The Court of Appeal took a divergent approach and allowed the respondents' appeal on the grounds that the 2015 Order did not have a retrospective effect. The reasons of the Court of Appeal will be further discussed in this judgment.

LEGISLATIVE FRAMEWORK

[7] By the amendment to the Members of Parliament (Remuneration) Act 1980 (Act 237), sub-s 3(1) was amended as follows:

(a) in para (a), by substituting for the words 'four thousand one hundred and twelve ringgit and seventy-nine sen' the words 'eleven thousand ringgit'; and

(b) in para (b), by substituting for the words 'six thousand five hundred and eight ringgit and fifty-nine sen' the words 'sixteen thousand ringgit'.

[8] Section 4 of the Act was also amended by substituting for the words 'fourteen thousand nine hundred and seven ringgit and twenty sen' the words 'thirty-one thousand ringgit'; and in paras (c) and (d), by substituting for the words 'ten thousand eight hundred and forty-seven ringgit and sixty-five sen' the words 'twenty-two thousand ringgit'.

[9] Notwithstanding s 7 of the Principal Act, the monthly salaries and allowances specified in the amendments to ss 3 and 4 of the Principal Act in ss 2 and 3 of this Act, and payable, shall commence from 1 January 2015 or from the date of appointment or election, whichever is the later, of the Members of Parliament, the President or Deputy President of the Senate and the Speaker or

Deputy Speaker of the House of Representatives, as the case may be.

[10] Before the amendment in Act A1491, sub-paras 20(1) and 20(2) of the First Schedule of the Members of Parliament (Remuneration) Act 1980 has been amended as follows:

> (a) Any pension granted under paragraph 2 or derivative pension granted under paragraph 5 or 6 shall be adjusted each year with an increment of two percent and shall be payable from January of each year.
>
> (b) Subject to subparagraph (1) where a Member is granted a pension only upon attaining the age of fifty years by reason of him becoming a Member for the first time on or after 1 July 1990 and has ceased to be a Member upon completing thirty six months of reckonable service but has not attained the age of fifty years on the date he ceased to be a Member, his pension shall be adjusted by an increment of two percent beginning from the second year he is granted the pension.

[11] These new provisions came into operation on 1 January 2014. The 'enabling power' point concerned with s 20 of the Interpretation Acts 1948 and 1967 (at para 31 of the Court of Appeal's ('COA') grounds of judgment ('GOJ')). The Court of Appeal relied entirely on the Federal decision in *Kerajaan Malaysia v Wong Pot Heng & Anor* [1997] 1 MLJ 437 ('Wong Pot Heng') and the subsequent Court of Appeal decision in *Syed Ibrahim bin Syed Mohd & Ors v Esso Production Malaysia Incorporated* [2004] 2 MLJ 49 ('Syed Ibrahim'). Such reliance on the aforementioned cases by the Court of Appeal was misplaced because the Legislature had through sub-ss 4 and 8 of the Interpretation (Amendment) Act 1997 (Act A996) amended s 20 of the Interpretation Acts). Act A996 was published in *gazette* on 24 July 1997 and the commencement date of the amendment was to retrospectively take effect from 18 May 1967 as provided by the deeming clause in s 3(2) of Act A996. Act A996 was necessitated to overcome *Wong Pot Heng*. The intention was made abundantly clear by the Legislature as can be seen in the Explanatory Statement of the Bill as is observed that the Court of Appeal in *Syed Ibrahim* refused to give effect to the amendment made to s 20 vide Act A996 for the following reasons (para [30], [2004] 2 MLJ 49 at pp 77–78):

> It was contended in *Wong Pot Heng* even though the Yang di-Pertuan Agong was not provided with the power to make subsidiary legislation with retrospective effect by the parent Act, he could do so by s 20 of the Interpretation Acts which empowered him to do so. This contention was rejected by the High Court and the Federal Court. The Federal Court went on to state that the Interpretation Acts are nothing more than interpreting words and phrases of the statutes. They have no legislative power to provide a person to make a subsidiary legislation with retrospective effect. The power for a person to make a subsidiary legislation must be provided by the parent Act itself and not by the provisions of the Interpretation Acts ... Though s 20 of the Interpretation Acts had been amended by the addition of several words it

would not change their character as Interpretation Acts. For that reason, the decision of *Wong Pot Heng* is still binding and the amendment to s 20 had not changed ...

[12] The Federal Court in *Wong Pot Heng* enunciated that a subsidiary legislation could only be made with retrospective operation if it was authorised by an express power in, or by necessary implication from its Parent Act. Such power could not be provided by s 20 of the Interpretation Acts 1948 and 1967 (Act 388) and that the Interpretation Acts are nothing more than interpreting words and phrases of the statutes which have no legislative power to provide a person to make a subsidiary legislation with retrospective effect.

[13] Hence with the amendment to Act 388 via the Interpretation (Amendment) Act 1997 [Act A996] *Wong Pot Heng*'s case is no longer binding. Consequently, the position of the law and character of Act 388 had since changed with the amendments as explained in the Explanatory Statement to the Bill (DR 18/97) and Hansard:

(i) The amendment to the long title of Act 388 is intended to reject the interpretation that Act 388 is only statute concerned, prima facie, with meaning of words used in statute so that the same word can have uniform meaning as far as possible, so that the same meaning need not be repeated in various statutes with much tedium;

(ii) The amendment to Section 20 will have the effect where a power is given in any written law to make subsidiary legislation, that legislation may be made to operate retrospectively despite the absence of express provision to that effect in the written law under which the legislation is made.

[14] The Explanatory Statement to the Bill (DR 18/97) quoted *Wong Pot Heng*:

5. The decision of the Federal Court in the *Wong Pot Heng*'s case has made it necessary for an amendment to be made to *section 20*, in particular, and to sections 23 and 25 of Act 388 *to make it clear that where a power is given in any written law to make subsidiary legislation, that legislation may be made (subject to the proviso mentioned above) to operate retrospectively despite the absence of express provision to that effect in the written law under which the legislation is made* ...

...

7. The amendment to the long title of Act 388 (as proposed in clause 4) seeks *to make it clear that the scope of Act 388 is not merely limited to the meanings of words used in written laws*.

...

9. Clause 7 of this Bill seeks to introduce a new section 17A into Act 388 which provides that an act ought to be interpreted by giving it the construction which

would promote the underlying purpose of the Act. (Emphasis added.)

[15] It was highlighted by the Deputy Minister of the Prime Minister's Department that since the coming into force of s 20 of Act 388 on 18 May 1967, countless subsidiary legislations have been made to operate retrospectively. Most of the subsidiary legislations that has retrospective effect is the exemption order. For example, exemption from income tax, sales tax, service tax, customs duty and stamp duty. He also explained that it is not practical to amend all the Acts and Ordinances that are or are still in force to include provisions that become necessary because of *Wong Pot Heng*'s case. Therefore, the only practical option is to amend Act 388.

THE COURT OF APPEAL

[16] The Court of Appeal's reasons are as follows:

(a) the respondents were possessed of the right to receive a pension that was in proportion to the then-current salaries of serving Parliamentarians. This was clearly a pre-existing and accrued right (even if the right to receive 167.46% increase had not yet accrued). The Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 could not have the effect of modifying retrospectively such right of the respondents, due to the proper operation of s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388);

(b) a subsidiary legislation can have retrospective effect if it only affects matters of procedure. Where however the subsidiary legislation affects vested or accrued rights or privileges, the subsidiary legislation can only have retrospective effect if the Principal Act expressly or by necessary implication provides that the subsidiary legislation may take effect retrospectively (re: para 63 of the COA GOJ);

(c) the Court of Appeal agreed with the senior federal counsel that that the right to receive a pension that was adjusted in accordance with the increase in salaries effected through the 2015 Amendment Act had not yet accrued as at 1 January 014. The unaccrued inchoate right to receive an increased pension was not saved by the s 30(1)(b) of the Interpretation Acts 1948 and 1967, the material portion of which reads as follows: (1) The repeal of a written law in whole or in part shall not — ... (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law;

(d) the respondents were possessed of the right to receive a pension that was in proportion to the then-current salaries of serving parliamentarians. This was a clearly a pre-existing and accrued right (even if the right to receive the 167.46% increase had not yet accrued). The 2015 Order

could not have the effect of modifying retrospectively such right of the respondents, due to the proper operation of s 30(1)(b) of the Interpretation Acts 1948 and 1967 (re: para 60 COA GOJ);

(e) a vested or an accrued right cannot be taken away by the repeal of a written law because of the protection given by s 30 of the Interpretation Acts 1948 and 1967 (Act 388). The effect of amendment to laws must be construed in accordance with s 30(1) of the Interpretation Acts 1948 and 1967 (Act 388), which among others preserves rights and privileges accrued under the repealed provisions;

(f) the crucial point to be determined is that whether at the time of the subsidiary legislation with retrospective effect is deemed to come into force, the related right is an accrued or a vested or an acquired right of the respondents or otherwise. If it is an accrued or a vested right, then it will be saved and protected by s 30(1)(b) of Act 388;

(g) vide the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 (PU(A) 38), the old para 20 was substituted and the new para 20 of the First Schedule which is deemed to have come into operation on 1 January 2014 was introduced. It was only some three months after the 2015 Order was *gazetted*, the Principal Act was amended to significantly increase the salaries of currently serving members of Parliament;

(h) at the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015, the previous Members of Parliament's entitlement to pension under the former (old) para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) which stated that 'Whenever the salaries of a Member are revised, the salary on which a pension granted under paragraph 2 or a derivative pension granted under paragraph 5, 6 or 7 is based shall be adjusted to the revised salary as appropriate and the pension or derivative pension recomputed accordingly' is not an accrued or acquired right which is saved or protected by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388);

(i) previous Members of Parliament's entitlement to pension under the former (old) para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is a contingent right and neither saved nor protected by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388); and

(j) the unaccrued inchoate right to receive an increased pension which was not saved by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388) can be modified or extinguished by retrospective amendment.

A OUR DECISION

Whether the amendments to sub-paras 20 (1) and 20 (2) of the First Schedule to the Members of Parliament (Remuneration) Act 1980 is unconstitutional

B **[17]** We are of the view that the new sub-paras 20(1) and 20(2) of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) are not unconstitutional and have not infringed the respondents' alleged constitutional rights under arts 132, 147 and 160(2) of the FC. Our reasons are as follows.

C

[18] Articles 132 and 147 of the FC are not applicable to the respondents as both the articles of the FC are specifically to cater for the members of the public services and protection of pension rights of members of the public services. Article 132 of the FC provides as follows:

D

Public services

(1) For the purposes of this Constitution, the public services are —

(a) the armed forces;

E

(b) the judicial and legal service;

(c) the general public service of the Federation;

(d) the police force;

F

(e) (Repealed);

(f) the joint public services mentioned in Article 133;

(g) the public service of each State; and

(h) the education service.

G

...

(3) The public service shall not be taken to comprise —

(a) ...

H

(b) *the office of President, Speaker, Deputy President, Deputy Speaker or member of either House of Parliament or of the Legislative Assembly of a State* ... (Emphasis added.)

[19] Article 147(1) of the FC further provides as follows: protection of pension rights the law applicable to any pension, gratuity or other like allowance (in this article referred to as an 'award') granted to a member of any of the public services, or to his widow, children, dependant or personal representatives, shall be that in force on the relevant day or any later law not less favourable to the person to whom the award is made.

I

[20] By virtue of art 132(3) of the FC, a member of either House of Parliament is not and cannot be regarded as being part of the public service. A

[21] The intention of the Legislature is clear that by s 3(2) of Act A996 the amended s 20 is to take effect retrospectively from 18 May 1967 ie to coincide with the commencement date of the Interpretation Acts itself. The Minister had articulated clear in Parliament that the amended s 20 of the Act was meant to validate past actions taken under all subsidiary legislations which were made retrospectively in the absence of express enabling powers in the parent Acts. It is therefore clear that s 20 was amended by Act A996 to reflect the unquestionable intention of the Legislature that the amended provision of s 20 should be treated as a provision which affords the requisite enabling power to allow subsidiary legislation to be made with retrospective effect. B C

[22] The Court of Appeal agreed that the right to receive a pension that was adjusted in accordance with the increase in salaries effected through the 2015 Amendment Act had not yet accrued as at 1 January 2014. For this reason, the unaccrued inchoate right to receive an increase pension was not saved by the s 30(1)(b) of the Interpretation Acts. However, the Court of Appeal in the same breath also held that at the time the amendment to para 20 was expressed to take effect, and the respondents were possessed of the right to receive a pension that was in proportion to the then-current salaries of serving parliamentarians. It was held that this was clearly a pre-existing and accrued right, even if the right to receive the 167.46% increase had not yet accrued. Therefore, the Court of Appeal concluded that the 2015 Order could not have the effect of modifying retrospectively such right of the respondents, due to the proper operation of s 30(1)(b) of the Interpretation Acts. D E F

[23] Section 30(1) of the Interpretation Acts is in *pari materia* with s 16 of the UK Interpretation Act 1978. This particular provision affords 'general savings for previous operation' that is the Interpretation Acts shall contain general savings for the previous operation of a repealed enactment (re: s 8.13 at p 299 Bennion, Bailey and Norbury on *Statutory Interpretation* (8th Ed)). This 'general savings' in the Interpretation Acts applies 'unless the contrary intention appears' and 'is by its nature intended to make express savings unnecessary' (re: s 8.13 at p 300 Bennion). G H

[24] However, it must be emphasised that the important qualification is this: that the 'general savings' as appearing in the Interpretation Acts 'may be displaced' by 'specific savings' in the amending or repealing Act itself 'specific savings may be made to deal with particular issues. In addition, the Interpretation Acts contain a number of general savings, although these may be I

displaced' (re: s 8.11 at p 297 Bennion). Section 16 of the UK Interpretation Act 1978, being a 'general savings', operates on the presumption that 'the repeal does not'.

[25] The requirement of 'unless contrary intention appears' serves as the same basis of the presumption against retrospectivity: an amending enactment is generally presumed to change the relevant law only from the time of the enactment's commencement. In the absence of a clear indication of a contrary intention in the protection of pension rights under art 147 of the FC only applies to members of the public services as expressly provided under art 132 of the FC and does not apply to the respondents who were not members of the public services.

[26] Specific savings expressly provided for in the amending Act or repealing Act may exemplify 'contrary intention' to place the 'general savings' prescribed by the Interpretation Act. It may prove necessary in a particular case to supplement or vary the general statutory savings by particular savings. If an Act introduces new provisions and repeals existing ones with savings, the savings will not be effective to preserve anything the continued existence of which is incompatible with the new provisions. Since the question is always the intention of the legislator, a saving may be made not only expressly, but also by implication.

[27] The 'general savings' in the Interpretation Act may be displaced by 'specific savings' in the repealing Act. This is explained in the Interpretation Act itself: 'An Interpretation Act has been called a drafting convenience ...'. Whether it is so stated or not, a provision of an Interpretation Act does not apply to an enactment if the contrary intention appears from that enactment; and the Interpretation Act itself will provide that its definitions apply only where no contrary intention appears. The courts and practitioners construing legislation also need to have in mind the current Interpretation Act and any other statutory interpretation provisions.

[28] As former Members of Parliament, the respondents do not come within the ambit of protection given by art 147 of the FC. The provisions of arts 132(1), (3) and 147(1) of the FC are very clear without any ambiguity. It is the court's duty to give effect to those provisions without attempting to modify and qualify them particularly where there is no ambiguity. In *Abdul Salam bin Husin v Majlis Angkatan Tentera & Anor* [2011] 2 MLJ 573; [2011] 2 CLJ 1 James Foong FCJ articulated:

> I wish to reiterate that it is the court's duty to give effect to the provisions of the Constitution and statutory law without attempting to modify and qualify it, particularly when there is no ambiguity ... In support of this proposition, I cite the often quoted passage by Barwick CJ of Australia in *Twist v Randwick Municipal*

Council [1976] 136 ALR 106: A

> ... the Court being bound by the legislation as much as is the citizen, has no warrant to vary the legislative scheme.

[29] The respondents relied on *The Government of Malaysia & Anor v Aminah bt Ahmad (suing in her personal capacity and on behalf of 56 retired members of the public service)* [2023] 5 MLJ 32; [2023] 8 CLJ 1 ('*Aminah Ahmad*'s case'). *Aminah Ahmad*'s case is peculiar based on the facts and therefore must be distinguished: B

(a) Aminah bt Ahmad, a pensioner who served the Government for more than 33 years, retired from the *public service* in September 2002; C

(b) in *Aminah Ahmad*'s case, challenges were made to the validity of certain amendments to the Pensions Adjustment Act 1980 (Act 238) on the ground that they are ultra vires art 147 of the FC; D

(c) based on the *long title* of the Pensions Adjustment Act 1980 (Act 238) it is among others an Act to provide for the adjustment of pensions and other benefits of officers in the public service:

> An Act to provide for the adjustment of pensions and other benefits of *officers in the public service* and in statutory and local authorities and of the dependants of such officers, for the granting and adjustment of pensions and other benefits of the dependants of certain categories of such officers, and for matters related thereto. E

(d) both Act 238 and art 147 of the FC concern about the officers/member of the public services and not those who are not members of such public services; F

(e) arts 132 and 147of the FC are specifically to cater for the members of the public services and protection of pension rights of members of the public services and nothing else; G

(f) pursuant to clear provision of art 132(3) of the FC, the public service shall not be taken to comprise the office of Member of either House of Parliament; and H

(g) since both Act 238 and art 147 of the FC are not applicable to the respondents, Mohd Azmi SCJ in *Government of Malaysia v VR Menon* [1990] 1 MLJ 277; [1990] 1 CLJ Rep 115 stated:

> The provision of art 147(1) guarantees the additional pension benefits to the respondent only if the 1980 Act is applicable to him. Since it is not applicable to him, that would be the end of the matter. I

[30] Thus, on the facts and the law *Aminah Ahmad*'s case is distinguishable from the present appeal before us. Pursuant to art 132(3) of the FC, the

respondents being previous Members of either House of Parliament are not members of the public services. We reiterate that the protection of pension rights under art 147 of the FC only applies to members of the public services listed under art 132 of the FC and does not apply to the respondents who were not members of the public services. Therefore, a situation of 'not less favourable' or 'not less favourable test' as clearly embodied in art 147(1) of the FC is specifically referred to the award of pension granted to a member of any of the public service and not to the respondents who are not members of the public services as listed under arts 132(1) and (3) of the FC.

[31] The respondents' claims are further unsustainable by virtue of the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 which has retrospective effect on 1 January 2014 as their claims are not rights which have already accrued when the 2015 Order was made on 16 February 2015. Such purported adjustment of pension based on the increase of salaries is not an accrued nor acquired right, but merely a contingent right that depends on the occurrence of specified event ie salary revision, or a merely inchoate right that has not fully developed, matured or vested, and therefore not saved by s 30(1)(b) of Act 388. The respondents' right be described as being:

(a) an immature right that is not ripe for enforcement (as through litigation) and which did not qualify as an enforceable claim;

(b) a contingent right that depends on the occurrence of some specified event; and

(c) an unconditional right not having become a completed, consummated right for present or future enjoyment.

[32] The right, privilege, obligation or liability that is not affected by the repeal of an Act or provisions of law is the right, privilege, obligation or liability which is already acquired, accrued or incurred under the repealed Act or repealed provisions and that something has been done to exert to such right, privilege, obligation or liability.

[33] The right of the respondents to receive a pension that was adjusted in accordance with the increase in salaries had not yet accrued at the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015. It was only some three months after the 2015 Order was *gazetted,* the Principal Act was amended to significantly increase the salaries of currently serving members of Parliament. Savings do not apply to a mere right to take advantage of a repealed enactment and something must have been done or have occurred to cause a particular right to accrue under a repealed enactment.

[34] At the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015, the previous Members of Parliament's entitlement to pension under the former para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) which stated that 'Whenever the salaries of a Member are revised, the salary on which a pension granted under paragraph 2 or a derivative pension granted under paragraph 5, 6 or 7 is based shall be adjusted to the revised salary as appropriate and the pension or derivative pension recomputed accordingly' is not an accrued or acquired right which is saved or protected by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388).

[35] Such previous Members of Parliament's entitlement to pension under the former para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is a contingent right and neither saved nor protected by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388). The unaccrued inchoate right to receive an increased pension is not saved by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388) can be modified or extinguished by retrospective amendment.

[36] Thus, the new sub-paras 20(1) and 20(2) of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) are not unconstitutional and have not infringed the respondents' alleged constitutional rights under arts 132, 147 and 160(2) of the FC. Any proposition that the amendments made to para 20 of the First Schedule of the Members of Parliament (Remuneration) Act 1980 (Act 237) vide Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 [PU(A) 38] were void being in contravention of arts 132, 147 and 160(2) of the FC is thus a non-starter.

[37] As we have alluded above s 20 of the Interpretation Acts 1948 and 1967 was amended to cure the ambiguity and to remedy the weakness in s 20 as identified by *Wong Pot Heng* the necessity for an express enabling power to make delegated legislation with retrospective effect. Act A996 was intended to validate past actions taken in reliance on the prevailing understanding of the pre-amendment of the aforesaid section. The said s 20 was amended by the insertion of the following phrase confers the necessary enabling power for retrospective amendment to be made vide PU(A) 38. Hence, s 3(6) of PU(A) 38 evinces incontrovertible 'contrary intention' that the 'general savings' in s 30(1)(b) of the Interpretation Acts of 1948 and the clear intent of the Legislature is to incorporate the 'specific savings' in PU(A) 38. Therefore, after 1 January 2014 any pre-existing 'right' to the previous method for recomputation of pension and derivative pension following the pre-amendment para 20 is thus extinguished by s 3(6)(b) of PU(A) 38.

[38] Section 3(6)(a) of PU(A) 38 preserves the existing 'right' of the member to any adjustment of 'pension or other benefits' which 'has not been made before 1 January 2014. If those exiting 'right' to adjustment of 'pension or other benefits' has not been made before 1 January 2014, 'such pension or other benefits shall first be adjusted in accordance with the First Schedule to the Act until 31 December 2013 as if all the paragraphs in the First Schedule to the Act, except para 20, have been in force before 1 January 2014.

[39] In other words s 3(6)(a) of PU(A) 38 if there has been in existence past salary revision to the serving member before 1 January 2014, which entails the corresponding pension adjustment to the retired member, in situation where the corresponding pension adjustment not having been carried out by the relevant paying agency, such adjustment shall first be made until 31 December 2013. Past adjustment before 1 January 2014, if any, which has not been reflected in the actual pension of the member represents the 'existing right' of the member which is reserved by operation of s 3(6)(a). Having so made the necessary adjustment as mandated by s 3(6)(a) 'until 31 December 2013', the said section provides that 'the pensions and other benefits of Member and their dependents shall, from 1 January 2014, be calculated based on paragraph 20 of the First Schedule to the Act as amended by this Order and shall be payable from that date'.

[40] Section 3(6)(a) indisputably preserves the 'right to receive a pension that was in proportion to the then current salaries of serving parliamentarians' up until 31 December 2013. However, after 1 January 2014, such 'right' is modified by s 3(6)(b). Section 3(6)(c) to (e) manifest the same intention.

[41] Thus, after 1 January 2014, the new method for recomputation of pension and derivative pension shall be adjusted each year with an increment of two percent and shall be payable from January of each year. Section 3(6)(a) of PU(A) 38 preserves the 'existing right' of the previous method of recomputation of pension up until 31 December 2013. On and after 1 January 2014, the combined effect of s 3(6)(b) to (e) extinguished that 'right' to the previous method of recomputation and substituted it with a new method of 2% yearly increment.

QUESTIONS 1, 2 AND 6

[42] Questions 1, 2 and 6 are about the effect of amendments to the Interpretation Acts 1948 and 1967 (Act 388), The Court of Appeal relied heavily on the Federal Court case of *Wong Pot Heng*, which, among others, held that the Interpretation Act 1948 and 1967 (Act 388) is nothing more than interpreting words and phrases of the statutes. It held that the said Act has no legislative power to provide for a subsidiary legislation with retrospective effect.

As we have alluded, only the Parent Act can provide for such power to make subsidiary legislation with retrospective effect, and it cannot be done via the provisions of Act 388.

[43] Because of the *Wong Pot Heng*'s decision, the Interpretation (Amendment) Act 1997 (Act A996) was introduced. Amongst the amendments made were to:

(a) the long title;

(b) s 20 of the Act; and

(c) insertion of new s 17A.

[44] The long title of an Act plays an important role in a statute/Act as it sets out the subject, scope and purpose of the statute/Act. The long title can be used in court as an aid to interpret the statute/Act. The declared purpose of the Interpretation Acts 1948 and 1967 (Act 388) as manifested in the long title to the Act was for the application, construction, interpretation and operation of written laws.

[45] The amendment made to the long title of Act 388 makes it clear that the scope of Act 388 is not limited merely to the meanings of words used in written laws. With the amendment to the long title, the character of Act 388 has changed, as the Act is no longer confined to merely interpreting words and phrases of the statutes, but shall have the legislative power to provide a delegated authority [power] to make a subsidiary legislation with retrospective effect as reflected from new s 20 of the Act.

[46] Further, the insertion of s 17A by Act A996 is to emphasise that in construing a provision of an Act, due regard must be had to the purpose or object of the Act. In the light of ss 15 and 17A of the Interpretation Acts 1948 and 1967 (Act 388), the purpose and object of Act 388 should be read into s 20 of Act 388 after its amendment in order to give it the meaning as intended by Parliament when it enacted Act A996.

[47] It cannot be gainsaid that the decision in *Wong Pot Heng* was premised on the old provisions of the long title and s 20 of the Interpretation Acts 1948 and 1967 (Act 388) prior to their amendment, that is to say, before the amendments to the long title, ss 15 and 20 of the Interpretation Acts 1948 and 1967 (Act 388) and the insertion of new s 17A vide Act A996. Therefore, *Wong Pot Heng*'s case is no longer binding and cannot stand after the amendment to Act 388 via Act A996. The amendments to Act 388 via Act A996 have changed the position of the law and character of Act 388.

[48] We wish to reiterate that in the interpretation of statutes, it is the fundamental rule of interpretation that statutes should be expounded according to the intent of the Legislature/Parliament. Such intent of Parliament manifests strongly in the Explanatory Statement to the Bill (DR 18/97), which sought to amend the Interpretation Acts 1948 and 1967 (Act 388) and Hansard when it states:

(a) the amendment to the long title of Act 388 is intended to reject the interpretation that Act 388 is only statute concern prima facie with meaning of words used in statute so that the same word can have uniform meaning as far as possible, so that the same meaning need not be repeated in various statutes with much tedium; and

(b) the amendment to s 20 will have the effect where a power is given in any written law to make subsidiary legislation, that legislation may be made to operate retrospectively despite the absence of an express provision to that effect in the Parent Act under which the legislation is made.

[49] We emphasised that the proposition that s 20 of the Interpretation Acts 1948 and 1967 (Act 388) after its amendment has never dispensed with the need for an express power to be given by the Parent Act and that the delegated authority is not entitled to legislate retrospectively in the absence of any express provision in its Parent Act will render the amended new s 20 and other amended provisions in Act 388 futile, otiose, in vain and nugatory. This runs contrary to the maxim that Parliament does not legislate in vain.

[50] For this court to disregard the express provision of amended s 20 of Act 388 would have a far-reaching effect and consequences in that the court is encroaching into the realm of legislative domain.

[51] Based on the above reasons, questions 1, 2 and 6 are answered in the affirmative.

QUESTIONS 3, 4 AND 5

[52] Questions 3, 4 and 5 collectively relate to the issue of whether the respondents' purported right for adjustment of pension based on the increase of salaries of serving members of Parliament is an accrued or acquired right which is covered or saved by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388). The Court of Appeal was, amongst others, of the view that the respondents possessed the right to receive a pension that was in proportion to the then-current salaries of serving Parliamentarians. This was held to be a pre-existing and accrued right (even if the right to receive 167.46% increase had not yet accrued). It was also held that The Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 could not have

the effect of modifying retrospectively such right of the respondents, due to the proper operation of s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388). A

[53] We are of the view that the Court of Appeal had erred in this respect. This is because, at the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015, the respondents' entitlement to adjustment of pensions to account for increment in salaries of current members of Parliament under the former (old) para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is neither saved nor protected by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388). The reason being, the respondents' claims were not rights which had already accrued when the 2015 Order was made on 16 February 2015. B C

[54] Such purported adjustment of pension based on the increase of salaries is not an accrued nor acquired right, but merely a contingent right that depends on the occurrence of specified event ie salary revision, or a merely inchoate right that has not fully developed, matured or vested, which is not covered nor saved by the provision of s 30(1)(b) of Act 388. D E

[55] The right, privilege, obligation or liability that is not affected by the repeal of an Act or provisions of law is one which is already acquired, accrued or incurred under the repealed Act or repealed provisions and that something has been done to exert such right, privilege, obligation or liability. F

[56] When the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015, the right of the respondents to receive a pension that was adjusted in accordance with the increase in salaries had not yet accrued at the time. In fact, the Principal Act was amended to increase the salaries of currently serving MPs, three months after the said 2015 Order. G

[57] Savings do not apply to a mere right to take advantage of a repealed provision, and something must have been done or have occurred to cause a particular right to accrue under a repealed enactment. In our present appeal, there is none. H

[58] The Court of Appeal erred when it relied on *Syed Ibrahim*, in holding that: I

(a) although s 20 of the Interpretation Acts 1948 and 1967 (Act 388) had been amended by the addition of several words after the case of *Wong Pot Heng*, it would not change their character as Interpretation Acts; and

(b) that the decision of *Wong Pot Heng*'s case is still binding and the amendment to s 20 of Act 388 has not changed the situation. In order to give the exemption order its retrospective effect, the Act must make provisions for it.

[59] Such findings by the Court of Appeal in *Syed Ibrahim* is erroneous as it had completely disregarded the effect of the amendments made to the long title, s 20 of the Interpretation Acts 1948 and 1967 (Act 388) and the insertion of new s 17A vide Act A996. Section 20 of Act 388, after its amendment, has dispensed with the need for an express power to be given by the Parent Act and that the delegated authority is entitled to legislate retrospectively notwithstanding the absence of any express provision in its Parent Act.

[60] Therefore, it follows that the decision in *Wong Pot Heng* which enunciated that 'a subsidiary legislation could only be made with retrospective operation if it was authorised by an express power in, or by necessary implication from its Parent Act is no longer binding, in view of the subsequent amendments made to the long title, s 20 of the Interpretation Acts 1948 and 1967 (Act 388) and insertion of new s 17A vide Act A996.

[61] The Court of Appeal decision in *Syed Ibrahim*'s case on this point was made per incuriam as it completely disregarded the law prevailing at the time.

[62] We therefore answered question 3 in the negative, while we answered questions 4 and 5 in the affirmative.

QUESTIONS 7 AND 8

[63] At the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015, the respondents' entitlement to pension under the former (old) para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) which stated that 'Whenever the salaries of a Member are revised, the salary on which a pension granted under paragraph 2 or a derivative pension granted under paragraph 5, 6 or 7 is based shall be adjusted to the revised salary as appropriate and the pension or derivative pension recomputed accordingly' is not an accrued or acquired right which is saved or protected by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388).

[64] The respondents' entitlement to pension under the former (old) para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is a contingent right which is neither saved nor protected by s 30(1)(b) of Act 388.

[65] The unaccrued inchoate right to receive an increased pension which was not saved by s 30(1)(b) of Act 388 can be modified or extinguished by retrospective amendment.

[66] We answered questions 7 and 8 in the affirmative.

OTHER ISSUES

[67] On the alleged unconstitutionality aspect of the new sub-paras 20(1) and 20(2) of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) as we have articulated above, the provisions are not unconstitutional as they have not infringed the respondents' alleged constitutional rights under arts 132, 147 and 160(2) of the FC.

[68] The Court of Appeal, in its analysis, held that the respondents were not members of the public service and hence, the protection accorded under art 147(1) of the FC did not apply.

[69] Articles 132 and 147 of the FC do not apply to the respondents. We wish to reiterate that those articles are specifically to cater for the members of the public services and the protection of pension rights of members of the public services.

[70] Pursuant to clear provision of art 132(3) of the FC, the public service shall not be taken to comprise the office of Member of either House of Parliament. The protection of pension rights under art 147 of the FC only applies to members of the public services listed under art 132 of the FC and does not apply to the respondents who were not members of the public services.

[71] The provisions of arts 132(1), (3) and 147(1) of the FC are very clear without any ambiguity. Thus, the court must give effect to those provisions without attempting to modify and qualify them, particularly where there is no ambiguity.

[72] All the respondents started serving as members of Parliament after the date of repeal of Act 394 ie 20 November 1992. The Parliamentary Service Act 1963 (Act 394) had been repealed by para 7(d) of the Constitution (Amendment) Act 1992 (Act A837), which came into operation on 20 November 1992.

[73] Consequently, effective 20 November 1992, the category of public service mentioned in s 2 of the Pensions Adjustment Act 1980 (Act 238) shall

no longer include the Parliamentary Service referred to in the Parliamentary Service Act 1963 (Act 394).

[74] The express provisions of art 132(3) read together with art 132(1) of the FC clearly exclude the office of Member of either House of Parliament from the list/category of public services. There is therefore no ambiguity as far as the provisions of arts 132(1), (3) and 147(1) of the FC are concerned. It is the court's duty to give effect to those provisions without attempting to modify and qualify them, particularly where there is no ambiguity.

[75] Therefore, there will be no issue that the amendment to para 20 of the First Schedule of Act 237 had resulted in a 'less favourable situation' to the respondents as allegedly guaranteed by art 147(1) of the FC.

[76] The respondents referred to the case of *Aminah Ahmad* in support of their case. However, *Aminah Ahmad*'s case is peculiar to its own facts, poles apart from our present appeal as we have explained above. The challenges therein were to the validity of certain amendments to the Pensions Adjustment Act 1980 (Act 238) on the ground that they are ultra vires to art 147 of the FC. Act 238 and art 147 of the FC apply to the officers/member of the public services and not those who are not members of such public services. Both Act 238 and art 147 of the FC are not applicable to the respondents, hence *Aminah Ahmad*'s case is distinguishable and cannot be applied this appeal.

[77] In the present appeal, premised on art 132(3) of the FC, the respondents, being previous Members of either House of Parliament, shall not be considered as members of the public services (unlike the situation in *Aminah Ahmad*'s case).

[78] A situation of 'not less favourable' or 'not less favourable test' as clearly embodied in art 147(1) of the FC is specifically referred to the award of pension granted to a member of any of the public service and not to the respondents (former Members of either House of Parliament) who were not considered as members of the public services listed under arts 132(1) and (3) of the FC.

[79] Therefore, there will be no issue that the amendment to para 20 of the First Schedule of Act 237 had resulted in a 'less favourable situation' to the respondents as allegedly guaranteed by art 147(1) of the FC.

[80] The constitutionality of the FC is considered from the perspective of the Constitution itself, and it is not to be interpreted by reference to other statutes. The Pensions Adjustment Act 1980 (Act 238) or the Parliamentary Service Act 1963 (Act 394), each being a subsidiary legislation qua the FC,

could not be interpreted in such a way as to fill any lacuna (if at all there is) the FC.

[81] Neither could Act 238 or Act 394 competent legal instruments to confer the status of members of the public services to Members of Parliament (respondents) under arts 132 and 147 of the FC.

CONCLUSION

[82] We answer the questions posed to us as follows:

(a) question 1:
In view of the subsequent amendments made to the long title, s 20 of the Interpretation Acts 1948 and 1967 (Act 388) and insertion of new s 17A vide Act A996, whether s 20 of the Interpretation Acts 1948 and 1967 (Act 388) after its amendment has dispensed with the need for an express power to be given by the Parent Act and that the delegated authority is entitled to legislate retrospectively notwithstanding the absence of any express provision in its Parent Act?
Affirmative;

(b) question 2:
Whether the decision in *Kerajaan Malaysia v Wong Pot Heng & Anor* [1997] 1 MLJ 437 which enunciated that 'a subsidiary legislation could only be made with retrospective operation if it was authorised by an express power in, or by necessary implication from its Parent Act is no longer binding in view of the subsequent amendments made to the long title, s 20 of the Interpretation Acts 1948 and 1967 (Act 388) and insertion of new s 17A vide Act A996?
Affirmative;

(c) question 3:
Whether the previous Members of Parliament's entitlement to pension under the former (old) para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) which stated that 'Whenever the salaries of a Member are revised, the salary on which a pension granted under paragraph 2 or a derivative pension granted under paragraph 5, 6 or 7 is based shall be adjusted to the revised salary as appropriate and the pension or derivative pension recomputed accordingly' is an accrued or acquired right which is saved or protected by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388), at the time when the Members of Parliament (Remuneration) (Amendment of First Schedule) Order 2015 was made on 16 February 2015.
Negative;

(d) question 4:
Whether such previous Members of Parliament's entitlement to pension

under the former (old) para 20 of the First Schedule to the Members of Parliament (Remuneration) Act 1980 (Act 237) is a contingent right and neither saved nor protected by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388)?
Affirmative;

(e) question 5:
Whether the unaccrued inchoate right to receive an increased pension which was not saved by s 30(1)(b) of the Interpretation Acts 1948 and 1967 (Act 388) can be modified or extinguished by retrospective amendment?
Affirmative; and

(f) question 6:
In view of amendment to long title of the Interpretation Acts 1948 and 1967 (Act 388) vide Act A996, whether the scope and character of Act 388 is not merely limited to meanings of words used in written law/interpreting words and phrases of the statutes?
Affirmative.

[83] Given the aforesaid, we allowed the appeal with no order as to costs. We set aside the decision of the Court of Appeal and affirmed the decision of the High Court.

[84] My learned sister and brother judges, Justice Zabariah Mohd Yusof FCJ and Justice Abdul Karim Abdul Jalil FCJ have had sight of the judgment in draft and concur with the reasons given and the conclusions reached.

Appeal allowed with no order as to costs; decision of Court of Appeal set aside; decision of High Court affirmed.

Reported by Dzulqarnain Ab Fatar